THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1020 and 1337 of 2007

.2.2007

Between:

Rapolu Sudhakar, S/o.Vijaya Lingam

… Petitioner

AND

The Secretary to Government of Andhra Pradesh,
Revenue (Endowments.II/I) Department, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1020 and 1337 of 2007

COMMON ORDER:

In these two writ petitions, challenge is to the Government Order being G.O.Rt.No.57 Revenue (Endowments.II/1) Department dated 08.1.2007, whereunder respondents 4 to 12 herein were appointed as members of Board of Trustees to the third respondent temple for a period of two years with effect from the date of taking oath of office and secrecy. The petitioners seek a writ of Mandamus declaring the impugned G.O. as illegal and contrary to the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity) and A.P. Charitable and Hindu Religious Institutions and Endowments Appointment of Trustees Rules, 1987 (hereafter called, the Rules).

The petitioner in W.P.No.1020 of 2007 is a devotee of Sri Anjaneya Swami who statedly participates in early celebrations held in Sri Hanuman Devastanam, Karmanghat. The said temple is registered as religious institution classified under Section 6(a) of the Act. The first respondent, who is the competent authority under Section 15(1)(a) of the Act, to appoint Board of Trustees for the third respondent temple, issued a notification in Memo.No.16986/Endts.II(1)/2005-1, dated 03.5.2005. The Commissioner of Endowments, second respondent herein, in obedience thereto issued a notice dated 17.5.2005 inviting interested persons to send their applications for trusteeship within twenty days from the date of issue of the said notice. Though the petitioner in W.P.No.1020 of 2007 did not apply, the petitioner in W.P.No.1337 of 2007 is one of the applicants. After conducting necessary enquiry as contemplated under the provisions of the Act and Rules, the first respondent issued the impugned G.O. In these writ petitions, it is

mainly contended that the notice as required under the Rules was not issued by the competent authority, that the same was not published in the daily newspapers, that the first respondent appointed trustees ignoring the claims of local residents and that there was long delay in appointing respondents 4 to 12 after issue of notice on 17.5.2005.

In both the writ petitions, the Assistant Secretary to Government of Andhra Pradesh in Revenue Department filed counter affidavit. In brief, it is the case of the first respondent that after expiry of the term of Board of Trustees, the Government issued notification under Section 15(1) of the Act on 03.5.2005 instructing the second respondent for issue of notice in Form-I as prescribed under Rule 4 of the Rules, calling for applications within twenty days from the date of the said notice. The second respondent published notice on 17.5.2005 and the same was affixed at the notice board of the third respondent temple as well as at the notice board of the Office of the Assistant Commissioner, Endowments, Ranga Reddy District. The Executive Officer of the temple sent a report on 25.5.2005 to the effect that the notice has been published. The second respondent received the applications and forwarded the same to the Assistant Commissioner of Endowments, Ranga Reddy District, for verification of antecedents. He submits a report to the second respondent stating that as per the enquiry conducted by the Inspector of Endowments, none of the applicants suffered disqualification under Section 19 of the Act except Sri J.Surender Reddy, who was facing allegations of illegal closure of well in the temple land and creating Samadhi of his father, and Sri Mettu Venkata Reddy, who has not completed the age of 30 years. After considering these applications, the Government issued the impugned G.O. appointing respondents 4 to 12 as trustees.

Learned Counsel appearing for the petitioners in both the writ petitions placing reliance on Sections 15, 17 of the Act and the Rules, submit that no proper notice in Form-I was issued by the Government, which is a competent authority, and that the notice issued by the second respondent is not sufficient compliance with the Rules. They also submit that as per Rule 4 of the Rules, the competent authority is required to publish the notice in the daily newspapers of the locality and the same was not done. They would further urge that when the notification was issued on 17.5.2005, the impugned G.O. was issued on 18.1.2007, after lapse of about two years, and therefore, the appointments of respondents 4 to 12 as trustees are vitiated. Learned Counsel for the petitioner in W.P.No.1337 of 2007 also submits that his client is a resident of Karmanghat village and as per Rule 8(a)(iii) of the Rules, first respondent ought to have preferred the petitioner to the contesting respondents, who are not residents of Karmanghat village.

Learned Government Pleader for Endowments submits that even though the Government is competent to appoint Board of Trustees for a temple classified under Section 6(a) of the Act, there is no prohibition in the Rules to cause publication by another authority and the notice issued in Form-I by the second respondent is sufficient compliance with Rule 4 of the Rules. He also refutes the other contentions. While adopting these submissions, learned Counsel for respondents 4 to 12 placed reliance on **Commissioner of Customs (Imports), Mumbai v M/s.Tullow India Operations Limited**[1] in support of the contention that even when a public functionary is required to take action within a specified time, the same cannot be construed as mandatory. Learned Counsel would contend that there is no time schedule for appointment of trustees and, therefore, even if the matter is pending before the Government for some time, the same does not render the impugned G.O. invalid.

The question that falls for consideration is whether the impugned G.O. suffers from any of the infirmities pointed out by the learned Counsel for the petitioners. The submissions of the Counsel may be considered with reference to the contraventions pointed out.

***i) Publication of notice by the Commissioner of Endowments*:**

Section 6 of the Act deals with preparation and publication of list of charitable and religious institutions. Religious institutions whose annual income exceeds Rs.5,00,000/- are classified under Section 6(a) of the Act. Chapter III of the Act deals with administration and management of Charitable and Hindu Religious Institutions and Endowments. As per Section 15 of the Act, if a religious institution is classified under Section 6(a) of the Act and whose annual income exceeds Rs.10,00,000/-, the Government shall constitute a Board of Trustees consisting of nine persons whereas if the income does not exceed Rs.10,00,000/- but exceeds Rs.5,00,000/-, the power is conferred on the Commissioner of Endowments to constitute the Board of Trustees even though the institution is classified under Section 6(a) of the Act. Section 17 of the Act contains the procedure for making appointment of trustees. It is to the effect that in making appointment of trustees under Section 15 of the Act, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner shall have due regard to religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder. By reason of the amendment by A.P. Act 27 of 2002, under the present legal dispensation, the founder or one of the members of the founder's family, if qualified as prescribed, shall be appointed as one of the trustees and under

Section 20(1)(b) of the Act, such person shall be the Chairman of the Board of Trustees. Under Section 17(3) of the Act, the procedure for calling for applications for appointment of trustees, verification of antecedents and other matters shall be prescribed by the Rules. As per subsection (2) of Section 17 read with Section 19(3) of the Act, every trustee appointed shall hold office for a term of two years from the date of taking oath of office and secrecy and a trustee shall have to take oath of office and secrecy within thirty days from the date on which he/she is appointed as Trustee under Section 19(2) of the Act.

A conspectus of relevant Rules would show that Sections 15, 17, 19 and 20 of the Act do not contemplate the issue of notice by the concerned appointing authority. These aspects are provided by the Rules. In exercise of Section 17(3) read with Section 153 of the Act, the Government promulgated the Rules. As per Rule 3 of the Rules, the Assistant Commissioner in whose jurisdiction institution is situated shall, ninety days before the expiry of the Trust Board, report to the authority competent to appoint trustees about the date of expiry of the Trust Board. Rule 4 of the Rules contains the procedure for publication of notice and reads as under.

> 4. (1) The authority competent to appoint trustees shall, forthwith on a report received under Rule 3, **cause publication** of the notice in Form-I.
>
> (2) The notice referred to in sub-rule (1) shall be affixed;
>
> (i) on the notice board of the office or on the front door of the institution or endowment or in any conspicuous place where there is no institution;
>
> (ii) on the notice board of the Sarpanch, Mandal Revenue Officer, Municipal Office, as the case may be; and
>
> (iii) on the notice board of the office of the Commissioner, Regional Joint Commissioner, Deputy Commissioner, Assistant Commissioner, and Inspector as the case may be:
>
> Provided that the competent authority **may also order of cause publication of the notice** in any daily news paper in the language of the locality at the cost of the institution or endowment, if it is situated in big cities and is capable of meeting the cost of publication.
>
> (emphasis supplied)

An analysis of the above Rule would show that after getting a report from the Assistant Commissioner, the competent authority shall cause publication of notice in Form-I. Such notice shall be affixed on the notice board of the office or on the front door of the institution or endowment, on the notice board of the Sarpanch, Mandal Revenue

Officer and Municipal Office, and on the notice board of the office of various departmental offices. Form-I is referred to in Rule 4(1) of the Rules as under.

FORM-I

[See Rule 4(1)]

Notice No……. Dated……. 19……

Name of the Institution: Sri…… Village …… Mandal…… District……..

It is hereby informed that a Trust Board will be constituted to Sri…… Mandal…… District…….. by the Government/Commissioner/Regional Joint Commissioner/Deputy Commissioner/Assistant Commissioner, Endowments Department …… under Section 15 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) after (twenty days) from the date of this Notice.

Interested persons may send their applications for trusteeship in the prescribed proforma vide Form II of the rules under Section 17(3) within (twenty days) from the date of this notice to ……

Reading Form-I with Rule 4(1) of the Rules, it becomes clear that the agency of public functionary publishing notice in Form-I need not necessarily be the appointing authority. The reason being the word used in Rule 4(1) of the Rules is "…… cause publication of notice in Form-I". To cause a thing to be done is by no means actually always done. This is quite clear by the proviso to Rule 4(2), which is to the effect that the competent authority may also order cause publication of notice in the language of the locality. "Cause Publication" is certainly different from taking out publication or publish notice in Form-I. This is further made clear by the language used in the prescribed Form-I. The notice in Form-I purports to inform all interested persons that Trust Board will be constituted by Government/Commissioner/Regional Joint Commissioner/ Deputy Commissioner/Assistant Commissioner of the Endowment Department. If Rule 4(1) is to be interpreted as obliging the competent authority itself to publish Form-I, the language of the Form-I would have been different. Therefore, even if the Government directs the Commissioner to publish notice in Form-I, the same is sufficient compliance with the requirement of law. In the absence of any prejudice to the petitioners in this regard, notice published by Commissioner cannot be considered as non-compliance with the Rules. Similarly the requirement of publication of notice in the daily

newspaper is within the discretion of the competent authority and it is not a mandatory requirement.

In these cases, there is no denial that the Government issued Memo No.16986/Endts.II(1)/2005-1, dated 03.5.2005, directing the second respondent to take necessary further action for publication and for issuance of notice in Form-I and appended to the Rules. A notification under Section 15(1) of the Act has also been published pursuant to which Form-I was published by the Commissioner. The procedure adopted is not rendered illegal or invalid merely because the first respondent themselves did not publish Form-I notice. This point is therefore answered against the petitioners and in favour of the respondents.

***ii) Delay in appointing Trustees of the Temple*:**

After publishing notice in Form-I on 17.5.2005, the applications received by the second respondent were sent to the Assistant Commissioner of Endowments for verification of the antecedents. After receiving his report, the Commissioner sent proposals vide letter Rc.No.F3/50055/2004, dated 22.11.2005. From 22.11.2005 till 08.1.2007, the matter was pending with the first respondent. Whether the delay vitiates the appointment of respondents 4 to 12?

The relevant provisions of the Act and the Rules to which a reference is made do not specifically contain a time-schedule for appointment of Board of Trustees. Of course, Rule 3 of the Rules requires the Assistant Commissioner in whose territorial jurisdiction the institution is situated to inform the competent authority about the expiry of the term of the Trust Board. Form-I also requires a minimum of twenty days notice inviting applications. These, however, do not lead to any conclusion that the competent authority is required to appoint a Trust Board immediately. In **M/s.Tullow India Operations Limited** (supra), the Supreme Court laid down that time limit within which public functionary has to act cannot be interpreted as mandatory. The relevant observations are as under.

> The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas of the Government of India. The functions performed by it are public functions. The notification never contemplated that a public functionary, having regard to the importance of the subject-matter and in particular when such importations are being made in public interest, would not dispose of the application for grant of essentiality certificate within a reasonable time so as to enable the importer to avail the benefit thereof. Applicants for grant of such certificates, having regard to their importance, should have been processed by the Directorate General of Hydrocarbons as expeditiously as possible but they did not choose to do so probably having regard to the fact that no

time schedule therefor was prescribed. **It is trite that when a public functionary is required to discharge its public functions within a time specified therefor, the same would be construed to be directory in nature.**

(emphasis supplied)

Learned Counsel for the petitioners placed reliance on an unreported judgment in W.P.No.20149 of 2006 dated 29.7.2006 delivered by me. A reading of the said order would show that in the said case when the appointment of Board of Trustees was not made pursuant to Form-I notice, this Court only directed to issue fresh notification and take up the appointment of Board of Trustees under Sections 15 read with 17 of the Act. When the matter was decided by this Court nobody was appointed as trustee but in these cases respondents 4 to 12 have already been appointed as trustees. In such an event, the delay if any does not vitiate their appointments. The submission is therefore rejected.

iii) Whether residents of the locality alone are to be appointed:

As per Rule 8 of the Rules, while appointing trustees the competent authority shall have due regard to the qualifications and disqualifications for trustee, laid down under the provisions of the Act and also to consider other merits enumerated thereunder in making appointments. Rule 8(a) of the Rules is to the effect that the candidate must be *inter alia* normally a resident of locality enjoying respect and esteem in that area. The word "normally" used before the words "a resident of locality" would certainly belie any contention that only residents of the locality should be appointed. Such interpretation would lead to absurd result and in a given situation might even render Rule 5(2) useless. Be it noted under Rule 5(2), if no application is received for appointment as trustee, the competent authority shall ascertain names of the persons qualified and obtain applications from them for being appointed as trustees. This only means that even the non-residents of locality can also be considered for appointment as trustees. As rightly pointed out by the learned Counsel for respondents 4 to 12, locality would certainly indicate a larger area than the surroundings of the temple or the village where the temple is situated. It is a common knowledge that in many places the temple in a village is visited by other villagers also, who take part in all the celebrations of the temple whether or not they are natives of the same village or reside in the same locality. Therefore, there is no merit in the submission made by the learned Counsel for the petitioner that only residents of the locality should be appointed as trustees.

iv) Is there any embargo on oath taking:

After filing the writ petition, the petitioner in W.P.No.1020 of 2007 filed additional affidavits. In one such affidavit, a contention is raised that the respondents 4 to 12 having failed to take oath of office and secrecy within thirty days from the date of the G.O. cease to hold office. The submission is misconceived. A perusal of the impugned G.O. would show that the first respondent while appointing respondents 4 to 12 directed the second respondent to take steps to administer oath of office and secrecy to the persons appointed and also for election of the Chairman of the Trust Board, as per the provisions of Section 20 of the Act. The impugned G.O. was issued on 08.1.2007. Even before the Commissioner could initiate action as ordered by the Government, the writ petition was filed on 17.1.2007 and, therefore, Section 19(3) of the Act has no application. Unless and until the second respondent convenes meeting by issuing notice to all the appointed trustees, the time of thirty days does not start running. Therefore, there cannot be any impediment for respondents 4 to 12 to take oath of office and secrecy under Section 19(2) of the Act, as and when the second respondent take steps to administer oath of office and secrecy. Be it also noted that as per Section 19(2) of the Act, it is only the Commissioner, who has to administer oath of office and secretary to respondents 4 to 12 and this process is yet to commence.

These writ petitions are devoid of merits and are accordingly dismissed. No costs.

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February , 2007. (**V.V.S.RAO,J**)

NOTE:

L.R.Copy be marked.

(By Order)

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[1] (2005) 13 SCC 789 = 2005(8) Supreme 790